

REMARKS

The present Amendment is in response the Final Office Action mailed July 18, 2005, in the above-identified application.

As an initial matter, Applicants acknowledge and appreciate the Examiner's willingness to conduct a telephone interview on October 18, 2005, to discuss the outstanding Final Office Action and the prior art references of record. During the telephone interview, the Examiner and the undersigned discussed the differences between the presently claimed invention and FR 2,718,635 to Caenen and WO 01/01893 to Marnay. In addition, the Examiner agreed that Applicants' proposed amendment of claim 1 to incorporate the limitations of claim 5 therein would not raise any new issues for consideration and/or require a new search because claim 5 was previously considered by the Examiner when issuing the Final Office Action.

In the Final Office Action, the Examiner objected to claim 1 as having a minor informality. In response, claim 1 has been amended to change "eternal" to --external--.

In the Final Office Action, the Examiner rejected claims 1-2 and 5 under 35 U.S.C. §102(b) as being anticipated by FR 2,718,635 to Caenen et al. Referring to FIG. 11 thereof, Caenen discloses an implant including a first plate 1, a second plate 2 and an insert 3 that is coupled with the second plate 2. The insert 3 includes a bearing surface for allowing movement of the first and second plates relative to one another. Applicants respectfully assert that claim 1 is unanticipated by Caenen et al. because the cited reference neither discloses nor suggests "at least one multi-pronged domed spring restoring force providing element disposed between the inner plate surfaces of said first and second plate members, and disposed such that a compressive load applied to the external plate surfaces of said

plate members is counteracted by said at least one multi-pronged domed spring restoring force providing element." Applicants respectfully assert that Caenen does not disclose a spring for counteracting compressive loads and that the bearing element 3 is not a "spring" as required by claim 1. Applicants also assert that claim 1 is unanticipated by Caenen because the cited reference neither discloses nor suggests that the "at least one multi-pronged domed spring restoring force providing element further comprises a central opening which includes a curvate volume for receiving and holding therein a ball-shaped head." Clearly, Caenen provides no teaching or suggestion that its insert member 3 has "a central opening which includes a curvate volume for receiving and holding therein a ball-shaped head." For these reasons, claim 1 is unanticipated by Caenen and is otherwise allowable. Claim 2 is unanticipated, *inter alia*, by virtue of its dependence from claim 1, which is unanticipated for the reasons set forth above.

The Examiner rejected claims 1 and 2 under 35 U.S.C. §102(a) as being anticipated by WO 01/01893 to Marnay et al., which corresponds to U.S. Patent No. 6,936,071. Applicants respectfully assert that claim 1 is unanticipated by Marnay because the reference discloses an insert having a bearing surface, which is not similar to the claim 1 requirement of a "spring" disposed between first and second plate members so that "a compressive load applied to the external plate surfaces of said plate members is counteracted by said at least one multi-pronged domed spring restoring force providing element." Claim 1 is also unanticipated by Marnay because the cited reference neither discloses nor suggests that the "at least one multi-pronged domed spring restoring force providing element further comprises a central opening which includes a curvate volume for receiving and holding therein a ball-shaped head." For all of the above reasons, claim 1 is unanticipated by Marnay

and is otherwise allowable. Claim 2 is unanticipated, *inter alia*, by virtue of its dependence from claim 1, which is unanticipated for the reasons set forth above.


In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 18, 2005

Respectfully submitted,

By 

Michael J. Doherty

Registration No.: 40,592
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants